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LARGO CONCRETE, INC. and N.M.N. CONSTRUCTION, INC.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

LARGO CONCRETE, INC., a California  
Corporation; N.M.N. CONSTRUCTION, INC., a  
California Corporation.

Plaintiffs,

v.

LIBERTY MUTUAL FIRE INSURANCE  
COMPANY, a Massachusetts Corporation, and  
DOES 1 through 100, inclusive.

Defendants.

AND RELATED COUNTERCLAIM

Case No. C07-04651 CRB (ADR)  
*The Hon. Charles R. Breyer*

**OBJECTIONS TO EVIDENCE SUBMITTED  
IN SUPPORT OF LIBERTY MUTUAL'S  
MOTION TO DISQUALIFY  
ROXBOROUGH, POMERANCE & NYE  
FROM REPRESENTING PLAINTIFFS**

Date: December 21, 2007  
Time: 10:00 a.m.  
Ctrm: 8

[Memorandum of Points and Authorities;  
and Supporting Declarations Filed and  
Served Concurrently Herewith]

Complaint filed: September 10, 2007

1 Plaintiffs/Counter-Defendants, LARGO CONCRETE, INC. and N.M.N. CONSTRUCTION,  
 2 INC. (hereinafter "Largo") hereby submit the following Objections to Evidence Submitted by  
 3 LIBERTY MUTUAL FIRE INSURANCE COMPANY (hereinafter "LMF") In Support of Liberty's  
 4 Motion to Disqualify Roxborough, Pomerance, & Nye (hereinafter "RPN") from representing Largo.

5 **A. Declaration of Lisa Kralik Hansen**

6 Largo objects to each and every paragraph of the declaration if Lisa Kralik Hansen ("Hansen")  
 7 based on Evidence Code Sections 402, 403, 602, 802, and 805 in that it is irrelevant, based on  
 8 speculation, is vague and misleading, lacks personal knowledge and/or is based on hearsay, is  
 9 inherently weak, and is not the best evidence available.

10 For example, paragraphs four and five state that Craig Pynes ("Craig") worked almost  
 11 exclusively on matters for the Liberty Mutual companies, performing various tasks, during his brief  
 12 tenure at KW. However, she conveniently neglects to inform the court that the work performed by  
 13 Craig involved matters that are completely unrelated to the present action. Hansen has already  
 14 conceded that 1.) she has no personal knowledge that Craig ever looked at a Liberty workers'  
 15 compensation claims manual; 2.) did not participate in any mediation on any workers' compensation  
 16 bad faith claims mishandling matters; and 3.) did not speak to any adjusters at Liberty regarding any  
 17 workers' compensation matters. Her deposition testimony in this regard was clear:

18  
 19 Q. You're not aware of Mr. Pynes ever looking at a workers' compensation claims  
 manual, are you?

20 A. I have no personal knowledge that Mr. Pynes would have indeed reviewed a  
 21 claims manual specific to workers' compensation, but he did review claims  
 manuals.

22 (Hansen Depo. taken 8/15/06 ("Hansen Depo I") at 39:21-25).

23 .....

24 Q. Okay. With regard to the next comment you make, written discovery, Mr. Pynes  
 never propounded or responded to the written discovery with regard to workers'  
 25 compensation bad faith, did he?

26 A. I don't know that he ever did that. To the best of my recollection, he did not.

27 Q. Mediation, Mr. Pynes was not involved in any mediation with regard to workers'  
 compensation bad faith, was he?

1 A. I do not believe he was.

2 (Hansen Depo. I at 40:1-10)

3 .....

4 Q. Okay. The next sentence, "Mr. Pynes also had some client contact with claims personnel with Liberty", Now, that client contact with claims personnel was never with workers' compensation claims personnel, was it?

5 A. To my personal knowledge, Mr. Pynes would not have had client contact with claims personnel who at that time were handling workers' compensation bad faith matters.

7 Q. Okay. Well, what do you mean by "at that time"?

8 A. During the time he was employed.

8 (Hansen Depo. I at 44:2-11.)

9 Also, Hansen's statement that she and Craig *represented* the Liberty Mutual Companies in the  
10 *TFF* matter is inaccurate and misleading. While Hansen claims to have "represented" a Liberty entity  
11 in this matter, LMF has produced no evidence that she performed any work on the matter. Her name  
12 does not appear on any of the limited pleadings filed in the matter and Craig's testimony is that he was  
13 not even aware Hansen was involved in the matter and that he never discussed the matter with her.  
14 Roxborough Decl. at ¶34; Pynes Decl. at ¶6. Hansen even conceded during her deposition that her  
15 alleged "representation" in the *TFF* matter was based on the fact that she was a member of the Liberty  
16 practice group at KW, not that she actually performed any specific work on the matter. Hansen Depo.  
17 taken on November 27, 2007 ("Hansen Depo II") at 34:5-15.

18 Paragraphs six and seven of Hansen's declaration should be stricken in their entirety because  
19 they are completely based on inadmissible hearsay and were cleverly drafted by LMF's counsel to  
20 mislead the court regarding the scope of work actually performed by Craig on the *TFF* matter. It is  
21 undisputed that Hansen was not a handling attorney on the *TFF* matter and was not in the room when  
22 the assignment was given to Craig. At the time Hansen executed her declaration in the *Republic*  
23 matter, she had no recollection of the *TFF* matter. At some point between the time she executed her  
24 declaration in that matter, August 1, 2006, and the time her deposition was taken on August 15, 2006,  
25 her memory was "refreshed" regarding the *TFF* matter. She further conceded that her description of  
26 the assignment Craig performed is based solely on what she was told by Craig and Yee. Hansen Depo.

1 II at 77:14-78:3; 102:25-103:3. To the extent her testimony is based on what she was told by Yee, it is  
2 inadmissible hearsay. Nonetheless, her declaration in this matter contains two paragraphs regarding  
3 TFF including the specifics of the assignment given to Craig. Hansen Decl. ¶6,7.

4 Hansen further conceded, contrary to her misleading declaration, that the only “training” or  
5 “supervision” she provided Craig on the *TFF* matter was during the course of an alleged 15 minute  
6 conversation which Craig denied even took place. Hansen Depo. II at 24:4-8; 35:6-36:10; Pynes Decl.  
7 ¶7. Hansen claims that Craig, an attorney who has an equivalent amount of legal experience, came to  
8 her, even though she was not a handling attorney on the matter, to ask about an assignment he had been  
9 given. Hansen’s only recollection regarding what was discussed is the general and misleading  
10 statement contained in paragraph 7 of her declaration that states she spoke with Craig about the  
11 document review, privilege review, or preparation of the privilege log. When questioned about this  
12 discussion at her deposition, she had no specific recollection of what was discussed. Hansen Depo. II  
13 at 24:4-8; 35:6-36:10. Nonetheless, she testified that she somehow “trained” him during the course of  
14 this brief conversation, despite the fact that she had never reviewed a workers’ compensation claim file  
15 herself, had never prepared a privilege log of that sort, and had absolutely no experience in this unique  
16 area of law.

17 Hansen is willing to do whatever it takes to regain her position in the ranks of the Liberty  
18 companies’ attorneys. Until recently Hansen’s 17 year career has been based primarily on representing  
19 the Liberty companies. She has not, however, been retained by the Liberty companies in the last 11  
20 months, but she has remained in contact with key Liberty executives and if given the chance, would  
21 strike at the opportunity to regain their business. Hansen Depo. II at 72:2-9. Hansen has demonstrated  
22 extreme bias in favor of Liberty and the testimony contained within her manufactured declaration  
23 should be stricken.

24 ///

25 ///

26 ///



1 **B. Declaration of Melodee Yee**

2 Largo objects to each and every paragraph of the declaration if Melodee Yee (“Yee”) based on  
3 Evidence Code Sections 402, 403, 602, 802, and 805 in that it is tantamount to perjury, is irrelevant, is  
4 based on speculation, is vague, lacks personal knowledge and/or is based on hearsay, is inherently  
5 weak, and is not the best evidence available.

6 At her deposition, Yee conceded that her declaration was drafted by counsel representing LMF  
7 in this matter and that she made no efforts to look at the scope of work she actually performed on TFF.  
8 In fact, Yee was first provided a draft copy of her declaration by Sheppard, Mullin Richter & Hampton,  
9 (Scott Sveslosky), she then discussed the contents of the declaration with Hansen, viewed Hansen’s  
10 declaration that was also to be filed in support of LMF’s motion, made a few minor, handwritten  
11 revisions to her declaration, then returned an executed copy to Mr. Sveslosky. Yee Depo. at 25:17-  
12 26:5; 31:16-22; 32:10-15.

13 Yee’s declaration states that she *represented* the Liberty companies in the *TFF* matter;  
14 however, when asked about TFF at her deposition, she did not recall when she first worked on the case  
15 or even the name of Plaintiffs’ counsel. She did not recall an application for stay being granted in that  
16 case, before Craig even worked at KW. She did not recall filing anything with the superior court, and  
17 did not recall why another attorney at KW, Penelope Park, was listed on a majority of the pleadings  
18 and she and Hansen were not. Yee Depo. at 70:1-74:21. Nonetheless, according to her declaration, she  
19 recalls the minor assignment given to Craig!

20 Yee has no recollection of the privilege log allegedly created by Craig at her direction;  
21 nonetheless, she did not feel it was necessary for her to ask counsel for LMF, upon being asked to  
22 prepare a declaration, for a copy of the *TFF* file.

23 Q. Did you ask him to get the Kern and Wooley file concerning Tony’s Fine Foods  
24 when you talked to him the number of times you’ve testified to?

25 A. No, I did not.

26 Q. Why is that?

27 A. Because my—I--

28 Q. I’m sorry?

1 A. I prepared the declaration or worked on it and it was to the best of my  
recollection so I did not ask Mr. Sveslosky to get any other documents.

2 Q. Where is the privilege log you referred to in your declaration?

3 A. I don't know.

4 Q. When was the last time you saw it?

5 A. When I was at Kern and Wooley.

6 Q. How many privilege logs have you prepared at Kern and Wooley for the seven  
or eight years you worked there?

7 A. A number.

8 Q. More than 50?

9 A. I don't think so.

10 Q. More than 20?

11 A. Maybe.

12 Q. What did you do with the privilege log? Did you throw it away?

13 A. No.

14 Q. Did you send it to Mr. Carlson?

15 A. No.

16 Q. How big was the privilege log?

17 A. I don't recall.

18 Q. What was on it? You don't remember, do you?

19 A. No. It was—it had—I'm sure it was in our privilege log format.

20 (Yee Depo. at 75:15-76:23)

21 Equally shockingly, at her deposition she admitted the first time she saw the *TFF* complaint,  
22 which she referred in ¶4 of declaration and which was attached as Exhibit "A" to her declaration, was  
23 at her November 16, 2007 deposition. Yee Depo. at 33:21-23; 34:2-21; 35:10-13. Yee has been a  
24 litigation attorney for 14 years; as such she has undoubtedly explained the importance of executing a  
25 document under penalty of perjury to many of her clients. Nonetheless, it is uncontested that she  
26 executed her declaration in this matter, under penalty of perjury, describing and verifying the  
27 authenticity of an attachment that she did not even see before or when she signed her declaration and  
28 it was not attached at the time of execution.

29 Q. Okay. So that was added after you signed the declaration, as far as you know?

30 A. Correct.

31 Q. So you didn't even look at Exhibit A when you signed the declaration, correct?

32 A. Correct.

33 (Yee Depo. at 34:16-21)

34 ///

1 The testimony contained within Yee's declaration is tantamount to perjury and should be stricken.

2 **C. Conclusion**

3 The declarations of Yee and Hansen are vague, misleading and contain a description,  
4 manufactured by counsel for LMF, of the assignment given to Craig on the *TFF* matter. LMF  
5 cleverly failed to provide a declaration from the partner and lead attorney on the *TFF* matter, Susan  
6 Olson; but Largo deposed her. Olson testified that the scope of the assignment to Craig on *TFF* was  
7 limited to a secondary review of four or five claim files, following the initial review by Yee, and to  
8 prepare the privilege log.

9  
10 Q. You didn't prepare a privileged log in the Tony's Fine Foods case; right?

11 A. I personally did not.

12 Q. Now, who did you ask to prepare one, because Ms. Yee testified that she was  
13 given a project. Ms. Kralik seems to indicate in her declaration that Ms. Yee  
14 had the project of looking at the claim files and Ms. Yee says that she asked  
15 Craig or that Craig was given a project on that. Your name doesn't appear  
16 anywhere. Just to be done with the depo, hopefully in 30 seconds can you  
17 explain your answer?

18 A. My understanding is that Ms. Yee did the first run through. The claim files  
19 showed me what documents she had questions on and then handed over to Mr.  
20 Pynes to do privilege logs and to make sure that she did not miss anything.

21 Q. Handed over to Mr. Pynes to do a privilege log or she gave you privilege Logs?

22 A. No Mr. Pynes prepared the privilege logs is my understanding. Ms. Yee might  
23 have tagged the documents.

24 Q. So she made the decision it was privileged?

25 A. She made the first decision, but I am certain asked Mr. Pynes to check all of the  
26 documents to make sure she did not miss anything. Then when Ms. Yee was  
27 out on maternity leave, I believe as documents came in, Mr. Pynes reviewed  
28 them, did the privilege log and I would review what he did.

(Olson Depo. at 69:10-70:13.)

22 Who are we to believe? Rather than present the best evidence, LMF attempts to mislead the  
23 court through the declarations of Hansen and Yee. LMF has access to both the alleged "draft"  
24 privilege log and KW's billing records that would indicate the amount of time Craig spent working on  
25 the matter. Craig's practice has always been to prepare detailed billing entries. Pynes Decl. ¶6. The  
26 privilege log would undoubtedly be the best evidence to show whether Craig did any "confidential"

1 work and the billing records would serve to show how little and what amount of time he spent on this  
2 single assignment. Not only did LMF intentionally fail to produce this evidence, they failed to even  
3 produce a declaration from the supervising attorney at KW, Susan Olson, or an individual in the billing  
4 department in order to best inform the court specifically about the *TFF* matter and the nature and scope  
5 of work performed by Craig.

6 All "evidence" contained within the declarations of Hansen and Yee should be stricken in its  
7 entirety under Evidence Code Sections 402, 403, 602, 802, and 805 in that it is based on speculation,  
8 is vague and misleading, lacks personal knowledge and/or is based on hearsay, is inherently weak,  
9 and is not the best evidence available.

10  
11 DATED: November 30, 2007

ROXBOROUGH, POMERANCE & NYE LLP

12  
13  
14 By: 

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